



# *COMMONWEALTH of VIRGINIA*

## *DEPARTMENT OF ENVIRONMENTAL QUALITY*

PIEDMONT REGIONAL OFFICE

4949-A Cox Road, Glen Allen, Virginia 23060

(804) 527-5020 Fax (804) 527-5106

[www.deq.virginia.gov](http://www.deq.virginia.gov)

Douglas W. Domenech  
Secretary of Natural Resources

David K. Paylor  
Director

Michael P. Murphy  
Regional Director

**STATE WATER CONTROL BOARD  
ENFORCEMENT ACTION - ORDER BY CONSENT  
ISSUED TO  
W. HAROLD TALLEY II, LLC  
FOR  
SURRY QUICK STOP  
Facility ID No. 4-018991**

### **SECTION A: Purpose**

This is a Consent Order issued under the authority of Va. Code § 62.1-44.15, between the State Water Control Board and W. Harold Talley II, LLC, for the purpose of resolving certain violations of the State Water Control Law and the applicable regulations.

### **SECTION B: Definitions**

Unless the context clearly indicates otherwise, the following words and terms have the meanings assigned to them below:

1. "Board" means the State Water Control Board, a permanent citizens' board of the Commonwealth of Virginia, as described in Va. Code §§ 10.1-1184 and 62.1-44.7.
2. "Cathodic protection" is a technique to prevent corrosion of a metal surface by making that surface the cathode of an electrochemical cell. For example, a tank system can be cathodically protected through the application of either galvanic anodes or impressed current.
3. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia, as described in Va. Code § 10.1-1183.

4. "Director" means the Director of the Department of Environmental Quality, as described in Va. Code § 10.1-1185.
5. "Facility" means the physical location where the USTs and/or UST system is installed and/or operated, aka "Surry Quick Stop", located at 11965 Rolfe Highway, Surry, Virginia. The Facility's USTs are owned by W. Harold Talley II, LLC, and the Facility is further identified by UST Facility ID# 4-018991.
6. "Financial Responsibility" means the ability to demonstrate that one has the financial resources available to pay for the costs of containment and cleanup and third party lawsuits in the event of a release from an UST or UST system.
7. "Form 7530-2" means the Notification for Underground Storage Tanks form used by DEQ to register and track USTs for proper operation, closure and ownership, in accordance with 9 VAC 25-580-70.
8. "Notice of Violation" or "NOV" means a type of Notice of Alleged Violation under Va. Code § 62.1-44.15.
9. "Operator" means any person who owns, operates, charters, rents or otherwise exercises control over or responsibility for a facility or a vehicle or vessel.
10. "Order" means this document, also known as a "Consent Order" or "Order by Consent," a type of Special Order under the State Water Control Law.
11. "Owner" means any person who owns an UST system used for storage, use, or dispensing of regulated substances as defined in Va. Code § 62.1-44.34:8 and 9 VAC 25-580-10.
12. "PRO" means the Piedmont Regional Office of DEQ, located in Glen Allen, Virginia.
13. "Regulated Substance" means an element, compound, mixture, solution or substance that, when released into the environment, may present substantial danger to the public health or welfare, or the environment, as defined in Va. Code § 62.1-44.34:8 and 9 VAC 25-580-10.
14. "Regulations" means the Underground Storage Tanks: Technical Standards and Corrective Action Requirements, 9 VAC 25-580-10 *et seq.*
15. "State Water Control Law" means Chapter 3.1 (§ 62.1-44.2 *et seq.*) of Title 62.1 of the Va. Code. Article 9 (Va. Code §§ 62.1-44.34:8 through 62.1-44.34:9) of the State Water Control Law addresses Storage Tanks.
16. "Talley" means W. Harold Talley II, LLC, a limited liability partnership, and its affiliates, partners, and subsidiaries. Talley is a "person" within the meaning of Va. Code § 62.1-44.3.

17. "UST" means underground storage tank as defined in Va. Code § 62.1-44.34:8 and 9 VAC 25-580-10.
18. "Va. Code" means the Code of Virginia (1950), as amended.
19. "VAC" means the Virginia Administrative Code.

**SECTION C: Findings of Fact and Conclusions of Law**

1. Talley owns the Facility in Surry, Virginia. Talley stores motor fuel in USTs at the Facility. Talley is a UST owner within the meaning of Va. Code § 62.1-44.34:8 and 9 VAC 25-580-10.
2. The USTs contain motor fuel a Regulated Substance, and are therefore subject to the Regulations. The Regulations require that all USTs meet final, specific performance requirements for release detection and spill, overfill, and corrosion protection.
3. On August 24, 2009, Department staff inspected the Facility to evaluate the compliance with the requirements of the State Water Control Law and the Regulations. At that time, there were two USTs on-site: one 12,000 gallon gasoline UST and one 8,000 gallon gasoline UST. DEQ staff observed the following:

- a. Department staff noted during the inspection that the two USTs described above were not registered under Talley's ownership and that the Form 7530-2 needed to be updated to reflect the current pipe release detection method, type of overfill protection device that was in use, and tank material of construction.

9 VAC 25-580-70 requires that an owner or operator of a UST system submit an amended Form 7530-2 to DEQ within 30 days of any change in ownership, tank status, tank/piping systems, or substance stored, including correct identification of the type of release detection used.

- b. Spill catchment basins were filled with liquid and debris and the fill ports were not labeled. DEQ staff could not determine what type of overfill protection device was being used, if any because the spill catchment basins were full.

9 VAC 25-580-50 requires that to prevent spilling and overfilling associated with product transfer to the UST system, owners and operators must comply with spill and overfill prevention equipment requirements specified in subsection 3 of 9 VAC 25-580-50.

- c. Documentation of tanks and piping corrosion protection was not provided to demonstrate compliance with the performance standards.

9 VAC 25-580-120 requires owners and operators maintain documentation of corrosion protection equipment.

- d. Monitoring results from the automatic tank gauge (ATG), used to detect a release from the tank and the underground piping, indicated invalid test results due to low levels of fuel.

Pursuant to 9 VAC 25-580-130, owners and operators of new and existing UST systems must provide a method, or combination of methods, of release detection that can detect a release from any portion of the tank and the connected underground piping that routinely contains product.

- e. Documentation of release detection records was not available for review.

9 VAC 25-580-180(2) requires that release detection records, including results of any sampling, testing, or monitoring be maintained for at least one year, or for another reasonable period of time determined by the board, except that the results of tank tightness testing conducted in accordance with subsection 3 of 9 VAC 25-580-160 must be retained until the next test is conducted.

- f. The Department had not received a report although the monitoring results from the automatic tank gauge indicated the sudden loss of a regulated product from the UST system may have occurred.

9 VAC 25-580-130(B) and 9 VAC 25-580-190 require owners and operators of UST systems to report within 24 hours to the Department when a release detection method indicates a release may have occurred.

- g. Financial responsibility had not been demonstrated based on a review of the current documentation.

9 VAC 25-590-40 requires that owners or operators of petroleum underground storage tanks shall demonstrate financial responsibility for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum underground storage tanks.

9 VAC 25-590-160 requires owners or operators to maintain evidence of all financial assurance mechanisms used to demonstrate financial responsibility for an underground storage tank and maintain such evidence at the underground storage tank site or the owner's or operator's place of work.

4. On August 24, 2009, the Department issued a Request for Corrective Action ("RCA") to RHM/Surry LLC, the Operator of the Facility who claimed responsibility during the time of the inspection. The RCA requested correction of all of the above-listed violations, including submittal of release detection results, an updated Form 7530-2, evidence of financial responsibility and other corrective actions. The RCA also requested that RHM/Surry LLC investigate the suspected release identified by ATG results. No response was received.
5. On December 9, 2009, the Department issued a Warning Letter to RHM/Surry, LLC, Operator of the Facility who claimed responsibility during the time of the inspection. The Warning Letter requested correction of all of the above-listed violations, including submittal of release detection results, an updated Form 7530-2, evidence of financial responsibility and other corrective actions. The Warning Letter also requested that RHM/Surry LLC investigate the suspected release identified by ATG results. No response was received.
6. On March 25, 2010, the Department issued Notice of Violation No. 10-3-PRO-502 jointly to Talley and RHM/Surry, LLC for violations listed in paragraphs C.3, above. In addition, Talley and RHM/Surry LLC were cited for failing to perform release detection on USTs and pressurized piping, which is required by 9 VAC 25-580-140(1) and (2), respectively, and failing to report a suspected release, as required by 9 VAC 25-580-210.
7. On May 6, 2010, Department staff met with representatives of Talley to discuss the violations. Talley filled out the Form 7530-2 during the meeting to reflect its ownership of the two USTs. The Form 7530-2 that Talley filled out was incomplete because it did not include the tank information. Documentation was submitted confirming that the spill prevention buckets had been emptied. Tank release detection test results were submitted and indicated that the regular grade tank (12,000 gallon UST) at the Facility had passing test results however premium grade tank (8,000 gallon UST) still had invalid test results due to low levels of motor fuel.
8. On April 28, 2011, Mr. David Talley became the managing member and the registered agent of W. Harold Talley II, LLC. During the meeting a representative of Talley agreed to complete the necessary actions to return the Facility to compliance.
9. On April 28, 2011, Department staff met with representatives of Talley to discuss the violations.
10. On May 12, 2011, the Department received documentation from Talley that verified that cathodic protection system testing was not required since the piping at the Facility was enclosed preventing contact with the soil. Passing line tightness and line leak detector test results were also included with the submittal.
11. On May 17, 2011, Department staff conducted a follow up inspection of the Facility. Department staff observed that the spill catchment basins were properly labeled, that the

overflow device was operating as required, and reviewed ATG monitoring results which confirmed passing tank release detection for the USTs at the Facility.

12. Based on the results of the August 24, 2009 inspection, the Board concludes that Talley has violated 9 VAC 25-580-70, 9 VAC 25-580-50, 9 VAC 25-580-120, 9 VAC 25-580-130, 9 VAC 25-580-130(B), 9 VAC 25-580-140(2), 9 VAC 25-580-180(2), 9 VAC 25-580-190, 9 VAC 25-590-40 and 9 VAC 25-590-160 as described in paragraphs C.3 and C.6 above.
13. In order for Talley to complete its return to compliance, DEQ staff and representatives of Talley have agreed to the Schedule of Compliance, which is incorporated as Appendix A of this Order.

#### **SECTION D: Agreement and Order**

Accordingly, by virtue of the authority granted it in Va. Code §§ 62.1-44.15, the Board orders Talley, and Talley agrees to perform the actions described in Appendix A of this Order.

#### **SECTION E: Administrative Provisions**

1. The Board may modify, rewrite, or amend this Order with the consent of Talley for good cause shown by Talley, or on its own motion pursuant to the Administrative Process Act, Va. Code § 2.2-4000 *et seq.*, after notice and opportunity to be heard.
2. This Order addresses and resolves only those violations specifically identified in Section C of this Order. This Order shall not preclude the Board or the Director from taking any action authorized by law, including but not limited to: (1) taking any action authorized by law regarding any additional, subsequent, or subsequently discovered violations; (2) seeking subsequent remediation of the facility; or (3) taking subsequent action to enforce the Order.
3. For purposes of this Order and subsequent actions with respect to this Order only, Talley admits the jurisdictional allegations, findings of fact, and conclusions of law contained herein.
4. Talley consents to venue in the Circuit Court of the City of Richmond for any civil action taken to enforce the terms of this Order.
5. Talley declares it has received fair and due process under the Administrative Process Act and the State Water Control Law and it waives the right to any hearing or other administrative proceeding authorized or required by law or regulation, and to any judicial review of any issue of fact or law contained herein. Nothing herein shall be construed as

a waiver of the right to any administrative proceeding for, or to judicial review of, any action taken by the Board to modify, rewrite, amend, or enforce this Order.

6. Failure by Talley to comply with any of the terms of this Order shall constitute a violation of an order of the Board. Nothing herein shall waive the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Board or the Director as a result of such violations. Nothing herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority.
7. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.
8. Talley shall be responsible for failure to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake, flood, other acts of God, war, strike, or such other occurrence. Talley shall show that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. Talley shall notify the DEQ Regional Director verbally within 24 hours and in writing within three business days when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of the Order. Such notice shall set forth:
  - a. the reasons for the delay or noncompliance;
  - b. the projected duration of any such delay or noncompliance;
  - c. the measures taken and to be taken to prevent or minimize such delay or noncompliance; and
  - d. the timetable by which such measures will be implemented and the date full compliance will be achieved.

Failure to so notify the Regional Director verbally within 24 hours and in writing within three business days, of learning of any condition above, which the Talley intends to assert will result in the impossibility of compliance, shall constitute a waiver of any claim to inability to comply with a requirement of this Order.

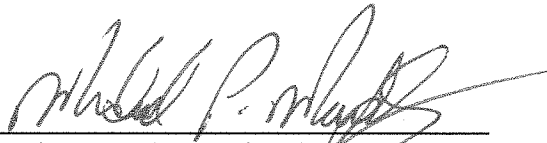
9. This Order is binding on the parties hereto, their successors in interest, designees and assigns, jointly and severally.
10. This Order shall become effective upon execution by both the Director or his designee and Talley. Nevertheless, Talley agrees to be bound by any compliance date which precedes the effective date of this Order.
11. This Order shall continue in effect until:

- a. Talley petitions the Director or his designee to terminate the Order after it has completed all of the requirements of the Order and the Director or his designee approves the termination of the Order; or
- b. the Director or Board terminates the Order in his or its sole discretion upon 30 days' written notice to Talley.

Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve Talley from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.

12. Any plans, reports, schedules or specifications attached hereto or submitted by Talley and approved by the Department pursuant to this Order are incorporated into this Order. Any non-compliance with such approved documents shall be considered a violation of this Order.
13. The undersigned representative of Talley certifies that he or she is a responsible official authorized to enter into the terms and conditions of this Order and to execute and legally bind Talley to this document. Any documents to be submitted pursuant to this Order shall also be submitted by a responsible official of Talley.
14. This Order constitutes the entire agreement and understanding of the parties concerning settlement of the violations identified in Section C of this Order, and there are no representations, warranties, covenants, terms or conditions agreed upon between the parties other than those expressed in this Order.
15. By its signature below, W. Harold Talley II, LLC voluntarily agrees to the issuance of this Order.

And it is so ORDERED this 5<sup>th</sup> day of AUGUST, 2011.

  
\_\_\_\_\_  
Michael P. Murphy, Regional Director  
Department of Environmental Quality

------(Remainder of Page Intentionally Blank)-----



W. Harold Talley II, LLC voluntarily agrees to the issuance of this Order.

Date: 6-7-2011 By: William D. Talley, Manager  
(Person) (Title)  
W. Harold Talley II, LLC

Commonwealth of Virginia

City/County of Henrico

The foregoing document was signed and acknowledged before me this 7th day of  
June, 2011, by William D. Talley who is  
Manager of W. Harold Talley II, LLC, on behalf of the company.

Victoria Daniel  
Notary Public

147379  
Registration No.

My commission expires: June 30, 2011

Notary seal:



**APPENDIX A  
SCHEDULE OF COMPLIANCE**

1. By September 15, 2011, Talley shall submit to DEQ a completed Notification for the USTs, Form 7530-2 in accordance with 9 VAC 25-580-70, reflecting the current status of the USTs to include what type of overfill protection and corrosion protection is in place.
2. By October 15, 2011, Talley shall submit documentation of financial responsibility to DEQ, in accordance with 9 VAC 25-590-10 *et seq.*
3. Unless otherwise specified in this Order, Talley shall submit all requirements of Appendix A of this Order to:

Jennifer Hoeffner  
Enforcement Specialist, Sr.  
VA DEQ – Piedmont Regional Office  
4949-A Cox Road  
Glen Allen, Virginia 23060  
804-527-5123  
804-527-5106 (fax)  
[jennifer.hoeffner@deq.virginia.gov](mailto:jennifer.hoeffner@deq.virginia.gov)